

§ 9701.325

first day of the first pay period beginning on or after the date the new rating of record is issued.

§ 9701.325 Treatment of employees whose rate of basic pay falls below the minimum rate of their band.

(a) In the case of an employee who does not receive a pay increase under § 9701.323 because of an unacceptable rating of record and whose rate of basic pay falls below the minimum rate of his or her band as a result of that rating, DHS must—

(1) If the employee demonstrates performance that meets or exceeds performance expectations within 90 days after the date of the rate range adjustment, issue a new rating of record under § 9701.409(b) and adjust the employee's pay prospectively by making the increase effective on the first day of the first pay period beginning on or after the date the new rating of record is issued; or

(2) Initiate action within 90 days after the date of the rate range adjustment to demote or remove the employee in accordance with the adverse action procedures established in subpart F of this part.

(b) If DHS fails to initiate a removal or demotion action under paragraph (a)(2) of this section within 90 days after the date of a rate range adjustment, the employee becomes entitled to the minimum rate of his or her band rate range on the first day of the first pay period beginning on or after the 90th day following the date of the rate range adjustment.

LOCALITY AND SPECIAL RATE SUPPLEMENTS

§ 9701.331 General.

The basic pay ranges established under §§ 9701.321 through 9701.323 may be supplemented in appropriate circumstances by locality or special rate supplements, as described in §§ 9701.332 through 9701.335. These supplements are expressed as a percentage of basic pay and are set and adjusted as described in § 9701.334. As authorized by § 9701.356, DHS implementing directives will determine the extent to which §§ 9701.331 through 9701.337 apply to employees receiving a retained rate.

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§ 9701.332 Locality rate supplements.

(a) For each band rate range, DHS may, after coordination with OPM, establish locality rate supplements that apply in specified locality pay areas. Locality rate supplements apply to employees whose official duty station is located in the given area. DHS may provide different locality rate supplements for different occupational clusters or for different bands within the same occupational cluster in the same locality pay area.

(b) For the purpose of establishing and modifying locality pay areas, 5 U.S.C. 5304 is not waived. A DHS decision to use the locality pay area boundaries established under 5 U.S.C. 5304 does not require separate DHS regulations. DHS may, after coordination with OPM and in accordance with the public notice and comment provisions of 5 U.S.C. 553, publish Departmental regulations (6 CFR Chapter I) in the FEDERAL REGISTER that establish and adjust different locality pay areas within the 48 contiguous States or establish and adjust new locality pay areas outside the 48 contiguous States. These regulations are subject to the continuing collaboration process described in § 9701.105. As provided by 5 U.S.C. 5304(f)(2)(B), judicial review of any DHS regulation regarding the establishment or adjustment of locality pay areas is limited to whether or not the regulation was promulgated in accordance with 5 U.S.C. 553.

(c) Locality rate supplements are considered basic pay for only the following purposes:

(1) Retirement under 5 U.S.C. chapter 83 or 84;

(2) Life insurance under 5 U.S.C. chapter 87;

(3) Premium pay under 5 U.S.C. chapter 55, subchapter V, or similar payments under other legal authority;

(4) Severance pay under 5 U.S.C. 5595;

(5) Application of the maximum rate limitation set forth in § 9701.312;

(6) Determining the rate of basic pay upon conversion to the DHS pay system established under this subpart, consistent with § 9701.373(b);

(7) Other payments and adjustments authorized under this subpart as specified by DHS implementing directives;